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Attorney for:  
Thought, Inc. – Third Party Non-Litigant

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

	)	STIPULATION REQUEST TO FACTS AND INFO
FIRESTAR	)	RE THOUGHT INC.'S MOTION TO QUASH THIRD
SOFTWARE, INC	)	PARTY SUBPOENA, OR IN THE ALTERNATIVE
	)	FOR A PROTECTIVE ORDER;
Plaintiff,	)	[PROPOSED ORDER]
	)	
v.	)	
	)	
	)	[CASE NO. C 07-80204 MISC MMC (EMC)]
RED HAT, INC.	)	
	)	
Defendant.	)	
	)	
	)	

**REQUEST FOR STIPULATION TO FACTS AND INFORMATION  
FROM REDHAT ATTORNEYS AS UNAVAILABLE WITNESSES**

**WITH REVISED MOTION TO QUASH AND PROTECTIVE ORDER**

Here comes Thought with this request for a stipulation of facts and information in order to more efficiently conduct a requested recorded telephonic meet and confer on October 1, 2007 between Thought , Inc and RedHat attorneys with the goal of trying to

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1 come to a reasonable settlement of all outstanding issues, and thus avoid the need for a  
2 hearing before the Court. In addition, Thought has provided herewith an amended  
3 proposed Motion to Quash and Protective Order that requests that RedHat pay any and all  
4 reasonable attorneys fees and expenses required for Thought to file and prosecute this  
5 Motion to Quash and request for a Protective Order with follow-on communications.  
6

7 Thought presumes that RedHat North Carolina attorneys Jon Pierce and Steve  
8 Moore are unlikely to be available in California as witnesses on the date of the hearing of  
9 the Thought Motion to Quash, since they have relegated their representation to a local  
10 California attorney by the name of D. Peter Harvey. Thus, at the time of the hearing,  
11 unless they stipulate to certain facts and information in writing, they will have managed  
12 to dodge directly answering Thought's questions and concerns and would have failed to  
13 directly answered certain critical questions and ascertain certain important facts of  
14 extreme relevance to the Thought position that filing the Motion to Quash was a direct  
15 and proximate result of the RedHat attorneys' (a) failure to respond to any of Thought's  
16 email or fax communications during the period from August 10, 2007 through the filing  
17 of the Motion to Quash on August 21, 2007, (b) failure to set up any meet and confer  
18 communications to resolve the issues raised in the several communications from Thought  
19 prior to August 21, 2007, and (c) failing to extend the LEGAL deadline for responding to  
20 the Subpoena August 21, 2007 to permit adequate time to confer and attempt to come to  
21 an agreement between the parties regarding the Thought issues and concerns respecting  
22 the Subpoena.  
23

24  
25 Thus, by October 1, 2007, Thought respectfully requests that RedHat attorneys  
26 stipulate to certain facts and information regarding prior communications between the  
27  
28

1 parties and upon several certain significant points that will need to be discussed in such a  
2 meet and confer or that will be issues to be addressed at the hearing. Upon the completion  
3 of such stipulations, Thought requests conducting a recorded telephonic meet and confer  
4 to attempt to settle all outstanding issues between the parties.  
5

6 Initially, Thought wants to make clear that it is still confused by RedHat prior  
7 statements in letters after August 23, 2007 and in the affidavit filed in response to the  
8 Motion to Quash, which state that RedHat had offered Thought an extension of time for  
9 responding to the subpoena during the August 10, 2007 telephone conference. RedHat  
10 went on to assert in the Pierce Affidavit filed as Exhibit A with the RedHat Response to  
11 the Motion to Quash that RedHat has granted several such extensions to other third party  
12 subpoena recipients. These statements are very confusing to Thought, because there  
13 exists multiple interpretations of such language having at least two very important factual  
14 situations that are not distinguished by the phrase **“extension of the period for response**  
15 **to the subpoena”** as utilized by RedHat. Thought is unable to determine what RedHat is  
16 attesting to having said or offered, because multiple meanings must be distinguished for  
17 any reasonable understanding to occur between the parties, and for the understanding of  
18 the court that might consider the Motion to Quash if the meet and confer does not result  
19 in a settlement.  
20  
21

22 a. One interpretation of the phrase **“extension of the period for**  
23 **response to the subpoena”** is the factual situation where a party might be  
24 offering or agreeing to extend ONLY the period for production under a subpoena  
25 (providing that a subpoena recipient would be willing to acquiesce to the scope of  
26 the subpoena as issued, not agree in advance to the cost of production under the  
27  
28

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1 subpoena and simply relinquish the right to file a Motion to Quash regarding any  
2 rights to not produce any proprietary subject matter without an adequate  
3 protective order being in place).

4  
5 b. A totally different interpretation of the phrase “**extension of the**  
6 **period for response to the subpoena**” is the factual situation where a party  
7 might be offering or agreeing to extend the **LEGAL** deadline for responding to  
8 the subpoena such that all legal rights of the subpoena recipient (including the  
9 right to file a Motion to Quash) are extended for a period of time beyond the  
10 initial period stated in the issued subpoena in order for the parties to discuss  
11 settlement of the issues without prejudice to the rights of the subpoena  
12

13  
14 Some confusion between the parties may have been occurring, because Thought  
15 has always and clearly meant the second phrase interpretation (2), as stated above, while  
16 it is possible that RedHat may have only been referring to the first interpretation meaning  
17 as stated in (1), above. Essentially, Thought has always maintained that filing the Motion  
18 to Quash was necessary to preserve Thought’s legal rights, because RedHat had never  
19 agreed to extend the legal deadline for the subpoena beyond its legal deadline date of  
20 August 21, 2007. Therefore, clarifying this point is a critical issue for an efficient  
21 settlement discussion or for the hearing.  
22

23 Therefore, for the purposes of answering the stipulations or factual inquiries set  
24 forth below, the definition for the phrase “extend the legal deadline for responding to the  
25 subpoena” shall mean that ALL remedies of the subpoena recipient are extended, not  
26 just that the period for one or more actions by recipient such as document production are  
27  
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1 extended. Accordingly, Thought hereby asks RedHat to clarify the factual record by  
2 answering the following stipulations and production of facts. RedHat should answer all  
3 stipulation questions with a “Yes” or “No” when those are the choices. If information and  
4 details other than a Yes or No are sought, such should be answered as completely as is  
5 possible. Failure to answer one question will not excuse answering the other questions.  
6

7 Should RedHat refuse to answer a Yes or No question or provide stipulations,  
8 then Thought requests a continuance to permit RedHat attorneys to travel to California  
9 and be available as witnesses to address the factual issues. Alternatively, if no  
10 continuance is granted, Thought asks the court to assume the presumption that a failure to  
11 answer one of the item stipulations be considered as an answer that would be most  
12 favorable to Thought’s positions in support of the Motion to Quash.  
13

14 **Requested Stipulations and Production of Facts**  
15

16 1. Prior to August 21, 2007, RedHat offered or agreed to extend for Thought  
17 the legal deadline for responding to the Subpoena beyond the August 21, 2007 date that  
18 was stated in the Subpoena as issued. Yes \_\_\_\_\_ No \_\_\_\_\_

19 2. If the answer to (A) is “Yes”, does any RedHat attorney have any  
20 contemporaneous memorandum to the file regarding the August 10, 2007 as adequate and  
21 clear proof that would to support such an unusual action as extending the Subpoena  
22 response date for all legal remedies beyond the August 21, 2007 due date. Yes \_\_\_\_\_  
23 No \_\_\_\_\_  
24

25 3. If the answer to (B) is “Yes”, please attach a true copy of such proof to the  
26 response to this communication.  
27  
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1           4. Did any RedHat attorney receive the four Thought communications to  
2 RedHat dated August 15, 2007, August 17, 2007, and two on August 20, 2007 prior to  
3 August 21, 2007, wherein Thought stated clearly by and through its representatives that  
4 Thought would be forced to file a Motion to Quash on August 21, 2007 because the legal  
5 deadline to respond to the Subpoena was due to expire on August 21, 2007.  
6

7 Yes \_\_\_\_\_ No \_\_\_\_\_

8           5. If the answer to (A) was "Yes" and RedHat was truly ready, willing and able  
9 to extend the legal deadline to responding to the subpoena (and was too busy to provide a  
10 detailed response to the Thought communications prior to August 21, 2007 as one  
11 communication has stated), please provide an explanation as to why did RedHat not  
12 simply find the very short amount of time necessary to communicate their lack of time to  
13 respond to Thought and extend the legal deadline for responding in writing by simply  
14 sending Thought a short 3 or 4 line communication by email or fax with a further offer to  
15 meet and confer in order to avoid the imminent necessity for Thought to file a Motion to  
16 Quash prior to the August 21, 2007 expiration of the legal deadline.  
17

18           6. Prior to August 21, 2007 had RedHat ever agreed in writing to pay the  
19 actual costs that Thought would incur to produce the items and information requested at  
20 the hourly rates quoted by Thought? Yes \_\_\_\_\_ No \_\_\_\_\_  
21

22 As of today's date? Yes \_\_\_\_\_ No \_\_\_\_\_

23           7. Prior to August 21, 2007 had RedHat ever agreed in writing to definitively  
24 limit the scope of use for Thought proprietary information to the extent that was  
25 requested by Thought during the August 10, 2007 telephone conference and in  
26 communications thereafter? Yes \_\_\_\_\_ No \_\_\_\_\_ As of today's date? Yes \_\_\_\_\_ No \_\_\_\_\_  
27

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1           9. To date, has RedHat ever provided Thought with any factually substantiated  
2 answer to refute Thought assertion that production of any of Thought proprietary  
3 information is unjustified because any information obtained from Thought proprietary  
4 software implementations of patented concepts and implementation end user  
5 documentation (if they could be produced from legacy systems) would be reasonably  
6 expected to only be duplicative and cumulative over information that an ORM expert  
7 would reasonably obtain from a thorough analysis of the Thought patent that is already in  
8 RedHat's possession? Yes \_\_\_\_\_ No \_\_\_\_\_

10           10. If the answer to (H) is "Yes" please provide such a factual basis, including  
11 (i) an affidavit from an ORM expert and (ii) an affidavit from a legal patent expert stating  
12 why the assertion by Thought of such information being only duplicative and cumulative  
13 is unfounded, because Thought has attested that it has first hand knowledge under its  
14 standard business practices that all implementations would only involve concepts  
15 thoroughly described in the patent itself and that are within the descriptive scope of the  
16 Thought patent.

18           11. Please explain factually why Thought's proprietary documents would be  
19 expected to provide information not available from other reasonable means such that  
20 RedHat should not withdraw its requests for these proprietary legacy documents (should  
21 they exist), in view of Thought's statements that all software implementations during the  
22 period set forth in the subpoena are conceptually described by the Thought patent that is  
23 already in RedHat's hands, and with a view to the fact that the validity of the Thought  
24 patent is not at issue in this case, such that copies of any proprietary implementations  
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1 would be irrelevant duplicative prior art if they are only cumulative and duplicative over  
2 the patent itself, which RedHat already has?

3 12. Please explain why RedHat continues to assert that it would be less  
4 expensive with respect to Thought's time and less disruptive to Thought's business to use  
5 a RedHat designated third party computer person to retrieve legacy software and  
6 documents, to extract only the relevant items (should they exist) from among many  
7 irrelevant but sensitive proprietary items, and to reconstruct any software releases in an  
8 organized manner that may be scattered on legacy systems, when (i) Thought experts  
9 would be reasonably expected to be the most knowledgeable about their own historical  
10 file system and products and thus the most efficient persons to do retrieval, sorting and  
11 compiling, (ii) in view of the fact that the December 8, 1999 PG&E power shortage fried  
12 the Thought legacy server hard drive system, which was then not fully reconstructed with  
13 respect to legacy documents, (iii) in view of the fact that the Thought inhouse proprietary  
14 download server for software implementations and documentations was hacked and virus  
15 infested shortly thereafter and needed to be wiped clean to remove the viruses, and (iv) in  
16 view of the fact that neat software package installers were not used during the subpoena  
17 time period and zip files for releases may not exist such that a knowledgeable Thought  
18 engineer may be required to group together individual files into release packages  
19 according to their content and date based on knowledge and expertise available only from  
20 a Thought engineer in order to reconstruct software implementation releases and their  
21 documentation even if individual files COULD be retrieved from the legacy system?  
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1           ***Though will need an answer from RedHat to the above requests for stipulation***  
2           ***and request for information Items 1-12 by Monday October 1, 2007 in order to***  
3           ***schedule and have a recorded telephonic meet and confer with RedHat attorneys on***  
4           ***October 1, 2007.***

6           Should RedHat refuse to expedite matters and therefore narrow the issues for  
7           discussion and scheduled hearing for the Motion to Quash by stipulating yes or no to any  
8           question set forth above or fail to provide the requested information and proof, Thought  
9           may be forced to ask the Judge for an continuance to provide an extension of time and  
10          rescheduling of the hearing for the Motion to Quash along with an order requiring  
11          RedHat to answer such stipulations and requests for information prior to any hearing.

13          Alternatively, if a continuance and rescheduling of the hearing on the Motion to  
14          Quash is not granted, Thought may ask the Judge to presume a stipulation response or  
15          information production answer from RedHat that is most favorable to Thought's position  
16          in the Motion to Quash and for a Protective Order.

17          Thought looks forward to receiving an answer from RedHat on this matter.  
18          Appended are two affidavits regarding factual matters and opinions, one from Ward  
19          Mullins (Exhibit 1) and one from Greg Baker (Exhibit 2).

21                   DATED: September 28, 2007                   Thought, Inc.

23                   

25                   John Jason Gentry Mullins

26                   Attorney to Non-Party Thought Inc.

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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

FIRESTAR SOFTWARE, INC

Plaintiff,

v.

RED HAT, INC.

Defendant.

**[PROPOSED ORDER - REVISED]**

**[CASE NO. C 07-80204 MISC (EMC)]**

For good cause shown, IT IS HEREBY ORDERED that nonparty Thought, Inc.'s  
Motion to Quash Subpoena is GRANTED.

DECLARATION OF GREG BAKER IN SUPPORT OF THOUGHT'S CASE NO. C 07-080204 MISC MMC (EMC)  
MOTION TO QUASH OR FOR A PROTECTIVE ORDER

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1  
2  
3 For good cause shown, IT IS HEREBY FURTHER ORDERED the nonparty  
4 Thought, Inc.'s Motion for a Protective Order ordering Red Hat to refrain from any  
5 further Subpoenas or Depositions of Thought, Inc. is Granted.  
6

7 For good cause shown, IT IS HEREBY FURTHER ORDERED the nonparty  
8 Thought, Inc.'s Motion for an award of attorney's fees and other reasonable fees related  
9 to filing and prosecuting this Motion to Quash and Protective Order and ordering Red Hat  
10 to pay Thoughts reasonable fees and other fees within thirty (30) days of receipt of an  
11 invoice from Thought summarizing such expenses is Granted.  
12

13 For good cause shown, IT IS HEREBY FURTHER ORDERED the nonparty  
14 Thought, Inc.'s motion to require Red Hat to make a proper showing with this Court to  
15 show just cause why this Protective Order should be modified prior to any further  
16 Subpoenas or Deposition of Thought, Inc. is Granted.  
17

18 For good cause shown, IT IS HEREBY FURTHER ORDERED the nonparty  
19 Thought, Inc.'s motion to require Red Hat to meet the following criteria to meet its  
20 burden to have this Protective Order modified, (i) Red Hat must make an adequate  
21 advance showing of the clear necessity for information of limited reasonable scope from  
22 Thought, Inc. (ii) that it is unavailable from other sources, (iii) must agree to conduct  
23 discovery in the least burdensome way possible to avoid the disruption of Thought, Inc.'s  
24 business, (iv) must agree upon a cost range in advance of any production efforts by  
25 Thought, Inc., and (v) must show that an adequate protective order of limited information  
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1 use is in place to protect Thought Inc.'s business interests and property interests in the  
2 Thought, Inc. proprietary information.  
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7 Judge, United States District Court

8 San Francisco, Division  
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DECLARATION OF GREG BAKER IN SUPPORT OF THOUGHT'S CASE NO. C 07-080204 MISC MMC (EMC)  
MOTION TO QUASH OR FOR A PROTECTIVE ORDER



Exh. 5.7

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Thought, Inc. – Third Party Non-Litigant

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

FIRESTAR SOFTWARE, INC	)	<b>DECLARATION OF WARD MULLINS IN SUPPORT</b>
	)	<b>OF THOUGHT INC.'S MOTION TO QUASH THIRD</b>
	)	<b>PARTY SUBPOENA, OR IN THE ALTERNATIVE</b>
	)	<b>FOR A PROTECTIVE ORDER;</b>
Plaintiff,	)	<b>[PROPOSED ORDER]</b>
	)	
v.	)	
	)	
	)	<b>[CASE NO. C 07-80204 MISC MMC (EMC)]</b>
RED HAT, INC.	)	
	)	
Defendant.	)	
	)	
	)	

**NOTICE OF MOTION; MOTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

I, Ward R. Mullins declare as follows:

1. I am the current CEO of Thought, Inc. and have personal knowledge of the matters related to Thought, Inc. with respect to the RedHat third party Subpoena of

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1 August 6, 2007 (received by Thought on August 9, 2007) and of the matters stated herein,  
2 and, if called as a witness, I could and would testify competently thereto.

3 2. I was a founder of Thought, Inc. and served as its CTO during the period  
4 prior to August 25, 1998 as referenced by the RedHat subpoena dated August 6, 2007. I  
5 have personal knowledge regarding the legacy systems of Thought, Inc. and the historical  
6 developments at Thought, including developments related to Thought software  
7 development and business records, including digital archiving and computer systems.

8 3. I hold a number of key ORM patents, including the Thought patent US.  
9 Patent No. 5,857,197 that is referenced in the RedHat subpoena dated August 7, 2007,  
10 which is a pioneering patent in the field of ORM technology.

11 4. I was the sole inventor for the Thought issued patent US. Patent No.  
12 5,857,197. Also, to the very best of my knowledge, understanding and recollection, no  
13 Thought ORM product was ever published or offered for sale prior to the filing date for  
14 this first Thought ORM patent filing date.

15 5. From the foundation date of Thought, Inc., both my personal policy and  
16 the strong corporate policy of Thought have always been to file a patent on any inventive  
17 concepts prior to any offering for sale or prior to any publication of any software  
18 implementations for a novel concept that might be patentable. To achieve this end of  
19 strong patent protection Thought has spent hundreds of thousands of dollars since 1994.

20 6. As the CTO of Thought during the period in question, I am personally  
21 aware that from the filing date of the initial Thought ORM patent in March 1997 through  
22 the end of the period that is referenced by the RedHat subpoena (September 25, 1998), all  
23 ORM software and documentation that were published or sold by Thought were simply  
24

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1 implementations of concepts that were described within this initial Thought patent text,  
2 claims or drawings as conceptual duplicates of the patent's concepts. Only after the  
3 period covered by the subpoena were any novel concepts filed for in Thought patents and  
4 then included within Thought software implementations for publication or sale.  
5

6 7. As an ORM expert, it is my sincere opinion that any review of Thought  
7 software implementations and corresponding documentation that published during the  
8 period of time set forth in the subpoena would be merely to obtain duplicative and  
9 cumulative prior art over the information that would be available to me from simply  
10 reviewing the text of the issued patent. Such information and concepts would likewise be  
11 readily obtainable and understandable to any ORM expert without the need to resort to  
12 reviewing any further implementations examples or documentation. As such, I would  
13 only consider optionally reviewing a patented software implementation that is focused  
14 upon end users instead of upon underlying concepts, as a final step for a narrowly  
15 focused optional review step that might not be required at all. It is important to recognize  
16 that implementation software and documentation are directed to an end user rather than to  
17 a competitor ORM expert who may wish to illegally reverse engineer the software. With  
18 implementation software the end user only experiences the software interfaces and the  
19 resulting output along with a description of how to get results in the user documentation  
20 rather than an explanation of the "black box" inner workings and concepts behind the  
21 software implementation that might provide such results.  
22  
23

24 8. Moreover, my expert opinion is that until such time as a feature described  
25 within the Thought patent is specifically identified to Thought as being relevant prior art  
26 that is at issue in the current litigation between FIRESTAR and RedHat, simply generally  
27  
28

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1 reviewing Thought documentation or software implementations would be a waste of time  
2 for any reputable ORM expert. In addition, I am personally aware that it would require a  
3 monumental effort for Thought to locate such materials from legacy systems and to then  
4 separate them from other Thought irrelevant yet proprietary information to provide such a  
5 redundant general review.  
6

7 9. Such unnecessary work to hoard potentially irrelevant documents and  
8 information to a later time for remotely possible use, when such documents and  
9 information can be readily sought and obtained in a more focused subpoena if they are  
10 required does not seem at all justified in view of the burden that I am clearly aware that it  
11 would place on Thought's business interests. In addition such potentially unnecessary  
12 efforts to obtain data and records that might not even be required can place at risk and  
13 possibly destroy important and irreplaceable Thought documents and data, particularly if  
14 RedHat is considering utilizing a third party to tinker with the Thought legacy systems in  
15 an attempt to produce documents and information, when such a third party is unfamiliar  
16 with both the Thought legacy systems and legacy software products. Since Thought did  
17 not utilize an installer program that neatly packages software products for publication,  
18 portions of legacy software packages may be widely scattered within legacy systems, if  
19 they are available at all. In fact, it may be necessary for Thought to use its historical  
20 knowledge of the legacy software and legacy systems along with its software expertise to  
21 re-package individual legacy software releases and documentations in order to distinguish  
22 between items that were published and items that were not ever published.  
23  
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25 9. For the reasons set forth above, software implementations and  
26 documentations are often of little use to an ORM expert to determine inner workings  
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1 concepts, unless the software is reverse engineered as part of the analysis. Typically,  
2 reverse engineering is not permitted by software licenses or copyrights, and the concepts  
3 behind the software are only available from source code or patent descriptions  
4 themselves.


5  
6 10. Accessing Thought legacy systems to obtain such data would be  
7 complicated by a number of important factors. For example, during the December 8,  
8 1999 PG&E six hour power outage the Thought main server hard drive system was  
9 damaged. Because of business needs at the time, it was not necessary to fully restore or  
10 reorganize legacy data upon the new hard drive system and much legacy data may be  
11 located (if at all) on other archive types that may be widely scattered, further complicated  
12 by the reality that we have moved physical offices since then and updated a number of  
13 our obsolete computer systems. Shortly after the December 1999 PG&E incident, the  
14 internet server for Thought proprietary software and documentation downloads was  
15 hacked, infested with viruses and the system needed to be wiped clean.

16  
17 11. Finally, Thought believes it would be foolhardy and seriously represent an  
18 unreasonable business risk with respect to important present and future Thought business  
19 interests to place irreplaceable Thought important data resources, some of which are  
20 Thought's ONLY source for such information unnecessarily in the hands of a third party.  
21 In the hands of any third party there would be a risk of irreplaceable data being  
22 accidentally destroyed or purposefully sabotaged by a competitor's agents. Because of  
23 such risks Thought is in the best place to retrieve any information from legacy systems, if  
24 required, at Thought's reasonable costs to avoid unnecessary risks to irreplaceable data.  
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1 I declare under penalty of perjury under the laws of the State of California that  
2 the foregoing is true and correct and that this declaration was executed this 28th day of  
3 September 2007, in San Francisco, California.  
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Ward R. Mullins  
CEO of Thought, Inc.

2:11.b.7 2

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Attorney for:  
Thought, Inc. – Third Party Non-Litigant

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

	)	<b>DECLARATION OF GREG BAKER IN SUPPORT</b>
FIRESTAR	)	<b>OF THOUGHT INC.'S MOTION TO QUASH THIRD</b>
SOFTWARE, INC	)	<b>PARTY SUBPOENA, OR IN THE ALTERNATIVE</b>
	)	<b>FOR A PROTECTIVE ORDER;</b>
Plaintiff,	)	<b>[PROPOSED ORDER]</b>
	)	
v.	)	
	)	
	)	<b>[CASE NO. C 07-80204 MISC MMC (EMC)]</b>
	)	
RED HAT, INC.	)	
	)	
Defendant.	)	
	)	
	)	

**NOTICE OF MOTION; MOTION**  
**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

I, Greg Baker, declare as follows:

1. I am the Director of Sales and a Co-Founder of Thought, Inc. and I have personal knowledge of the matters related to Thought, Inc. with respect to the RedHat third party Subpoena of August 6, 2007 (received by Thought on August 9, 2007) and of

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1 the matters stated herein, and, if called as a witness, I could and would testify  
2 competently thereto.

3 2. On July 13, 2007, I received a telephone call from Jon Pierce purporting  
4 to be an attorney from Red Hat litigation and received on that same date an email from  
5 him with at draft copy of a subpoena that broadly requested legacy and proprietary  
6 documents from Thought, Inc. Thought, Inc. has important business interests in its  
7 proprietary documents and I was busy conducting the regular business of Thought, Inc.  
8 and Mr. Pierce: (i) made no offers to pay for any costs to check for the existence of such  
9 documents, (ii) made no offers to restrict the scope of this preliminary draft document to  
10 a more narrow scope or provide a protective order, and (iii) I was unable to verify  
11 whether this was a bogus document or communication. Therefore, I took no action  
12 beyond forwarding the email to our outside counsel and awaiting a formal subpoena  
13 request that could be verified as coming from a legitimate court action.  
14

15 3. On August 9, 2007, Thought received a Subpoena from RedHat that  
16 broadly requested legacy and proprietary documents from Thought with a tight legal  
17 deadline of August 21, 2007 for responding. I immediately contacted our attorney and  
18 set up a conference call with Jon Pierce and the attorney who was supposed to have  
19 negotiating authority from RedHat to address Thought's concerns for August 10, 2007.  
20

21 4. On August 10, 2007, our counsel, John Jason Gentry Mullins, and I had a  
22 telephone conference with the two RedHat attorneys.  
23

24 5. I attest to the accuracy of the following facts below from that telephone  
25 conference and from follow-on communications thereafter, to the best of my memory  
26 notes, understanding and recollection.  
27

28 DECLARATION OF GREG BAKER IN SUPPORT OF THOUGHT'S CASE NO. C 07-080204 MISC MMC (EMC)  
MOTION TO QUASH OR FOR A PROTECTIVE ORDER



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1           6.       I hereby attest unequivocally that at no time during the telephone  
2 conference did either of the RedHat Attorneys (Jon Pierce and Steve Moore) ever offer  
3 or agree to extend the LEGAL deadline for responding to the subpoena beyond the  
4 August 21, 2007 date.

5  
6           7.       I attest that the RedHat attorneys would not agree orally and did not agree  
7 prior to August 21, 2007 in writing to send Thought a writing modifying the subpoena in  
8 any way with respect to (i) the scope of the subpoena, (ii) use restrictions upon any  
9 proprietary information that might be produced by Thought, (iii) providing a reasonable  
10 explanation and justification for requesting the proprietary and legacy information, (iv)  
11 addressing Thought concerns in writing regarding the lack of a protective order, and (v)  
12 extending the legal period for responding in order to meet and confer to address  
13 Thoughts concerns and get a settlement agreement to narrow the scope.

14  
15           8.       I attest that during the August 10, 2007, RedHat would only generally  
16 discuss the subpoena and would not agree or seriously consider any changes to the  
17 subpoena. It is possible that RedHat may have stated in passing that they could consider  
18 (without any firm agreement to that effect) being liberal about the production period if  
19 Thought would agreed not to contest the subpoena as it then stood and to simply produce  
20 all the items requested. However, as RedHat must be well aware, there was never any  
21 commitment or offer from them to Thought to extend the legal deadline in order to have  
22 further discussions beyond the August 21, 2007 date.

23  
24           9.       I attest that during the August 10, 2007 conference and in several  
25 communications thereafter, I expressed my concerns to the RedHat Attorneys (Jon  
26 Pierce and Steve Moore) that the subpoena was burdensome, overbroad, requested  
27



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1 proprietary information without any protective order being in place or any limitations on  
2 how the information would be used. I also expressed my concern that all of the  
3 information or data would be located (if at all) on legacy systems and it would be  
4 difficult, time consuming, disruptive to Thought's ongoing business concerns, and  
5 expensive to obtain the information. I expressed our view that any information that  
6 might be gleaned from our earlier software releases and documentation would merely be  
7 duplicative or cumulative over the concepts presented in the Thought patent already in  
8 the possession of RedHat. RedHat attorney's informed me that they were very early in  
9 the discovery process and had not had time to analyze the Thought patent to determine if  
10 what I was saying was in fact true or untrue.

11  
12 10. I attest that in the telephone conference of August 10, 2007, I directly  
13 asked the RedHat attorneys to either narrow the scope of the subpoena in writing or to  
14 withdraw it without prejudice until they could review the Thought patent and determine  
15 if the expensive and disruptive process of accessing legacy systems would really be  
16 necessary, so they could focus our efforts only on items that would actually be needed.

17  
18 11. I attest that at the end of the August 10, 2007 telephone conference, the  
19 parties had only made a single verbal agreement for the entire conversation, which was  
20 for me to send RedHat our written concerns as soon as possible to compile them to  
21 writing, and they agreed that they would get back with Thought on those concerns.

22  
23 12. I attest that I offered RedHat (as a professional courtesy rather than any  
24 acquiescing to the Supboena) in the August 10, 2007 conference and in my August 15,  
25 2007 follow-up email, for Thought to consider looking for and providing certain  
26 duplicative and cumulative proprietary documents for RedHat if they would (1) provide  
27  
28

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1 a protective order and use limitation for the information, (2) pay our reasonable costs for  
2 obtaining the information, (3) give us an extension of time to try to locate the  
3 information on our legacy systems, and (4) because of the potential continued future  
4 disruption to Thought's ongoing business interests to agree to not ask for further  
5 documents by subpoena unless they had exhausted other resources and could provide us  
6 with acceptable reasons why they were necessary for RedHat's defense and not  
7 duplicative or cumulative over information already in the hands of RedHat.  
8

9 13. In my August 15, 2007 email on the last page, last paragraph, I had stated  
10 that unless Thought could get a response from RedHat and come to a mutual agreement  
11 to address Thought concerns, by August 17, 2007 Thought would be compelled to file a  
12 Motion to Quash because of the inherent deadlines and egregious conditions set forth in  
13 the Subpoena. Accordingly, my August 15, 2007 letter makes clear to RedHat that we  
14 understood the legal deadline of August 21, 2007 to be a firm date for filing our Motion  
15 to Quash to preserve our rights, and because RedHat had not agreed to extend the legal  
16 deadline beyond the firm deadline of August 21, 2007.  
17

18 14. I attest that I had my written concerns and our cost estimates sent to  
19 RedHat on August 15, 2007, but RedHat never responding telephonically, by email, fax,  
20 or regular mail prior to the August 21, 2007 date deadline for legal response to the  
21 subpoena.  
22

23 15. I attest that on August 20, 2007, I had a follow-up fax sent to RedHat  
24 along with a copy of the August 15, 2007. At the end of the next to last paragraph of the  
25 two page fax communication and in its last paragraph, I indicated that RedHat had failed  
26 to make any effort to agree to extend the deadline for responding to the subpoena, had  
27

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1 failed to respond to the August 15, 2007 letter, and that it would be necessary to file a  
2 Motion to Quash on August 21, 2007 since no compromise had been reached and the  
3 legal period for response would expire on August 21, 2007.

4  
5 16. I attest that RedHat did not acknowledge or respond to my August 20,  
6 2007 fax, or the letter send later that day by our attorney to address specific concerns for  
7 each item listed on the subpoena. No response was ever received from RedHat either  
8 telephonically, by email, fax, or regular mail to extend the legal deadline for response to  
9 the subpoena beyond August 21, 2007 in order to seek a compromise by a meet and  
10 confer. Such an action would have required little time or effort if RedHat was willing to  
11 extend the legal deadline.

12  
13 17. I attest that even though Thought counsel waited until the end of the day,  
14 and contacted Thought representative to check for a RedHat resonse on August 21, 2007  
15 prior to filing the Motion to Quash, there was no response or acknowledgement from  
16 RedHat regarding any prior communications by Thought from RedHat as of that time..

17  
18 18. I attest, in short, that prior to August 21, 2007, when our attorney filed a  
19 Motion to Quash, RedHat had never responded by telephone, email, fax or any other  
20 communication to even acknowledge my August 15, 2007 letter, to respond on its merits  
21 or to agree to extend the legal deadline to give the parties time to meet and confer on the  
22 issues and concerns raised by Thought in the August 10, 2007 conference and as set  
23 forth in detail in my August 15, 2007 letter.

24  
25  
26  
27  
28  
DECLARATION OF GREG BAKER IN SUPPORT OF THOUGHT'S  
MOTION TO QUASH OR FOR A PROTECTIVE ORDER

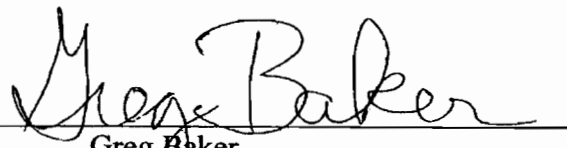
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1  
2  
3  
4  
5 I declare under penalty of perjury under the laws of the State of California that  
6 the foregoing is true and correct and that this declaration was executed this 28th day of  
7 September 2007, in San Francisco, California.  
8

9  
10  
11   
12 Greg Baker  
13 Director of Sales, Thought, Inc.  
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**CERTIFICATE OF SERVICE**

[CASE NO. C 07-80204 MISC MMC (EMC)]  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Third nonparty Thought, Inc. hereby certifies by and through its attorney John Jason Gentry Mullins that a true and correct copy of foregoing THOUGHT INC.'S STIPULATION REQUEST TO FACT AND INFO RE MOTION TO QUASH THIRD PARTY SUBPOENA, AND REVISED PROTECTIVE ORDER: [PROPOSED ORDER] was served by at least one of US mail, fax or email to:

Allen F Gardner Potter Minton, A Professional Corporation 110 North College, 600 Plaza Tower Tyler, TX 75702	Steve Moore, Attorney and Partner, and Jon Pierce, Attorney Kilpatrick Stockton LLP 1001 West Fourth Street, Winston-Salem, NC 27101-2400 Phone: (336) 607-7503 Fax: (336) 734-2638
HARVEY SISKIND LLP D. Peter Harvey (SBN 55712) 4 Embarcadero Center, 39th Floor San Francisco, CA 94111 Telephone: (415) 354-6100 Fax (415) 391-7124	

DATED: September 28, 2007.



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